



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

July 19, 2019

In Reply Refer To: 001B
FOIA Request: 18-12960-F

Jasper Craven
MuckRock News
DEPT MR 52794
411A Highland Ave
Somerville, MA 02144-2516
60928-54075057@requests.muckrock.com; jclarkcraven@gmail.com

Dear Mr. Craven,

This is the Initial Agency Decision (IAD) from the Office of the Secretary, U.S. Dept. Veterans Affairs (OSVA) to your Freedom of Information Act (FOIA) request dated and received September 15, 2018, and assigned FOIA tracking number **18-12960-F**. You requested: "all e-mail communications between officials at The University of Phoenix and the following officials: Christopher Britt, Casin Spero, Darin Selnick, Curt Cashour, David Shulkin, Robert Wilkie, Scott Blackburn, Thomas Bowman, Peter O'Rourke, Brooks Tucker and Jonathan Ulliot between Jan. 20, 2017 and present day. Keywords should include, but are not limited to, "regulation" "VA," "for profit," "education," and "38 U.S.C. 3683." The emails from the University of Phoenix staffers will end in @phoenix.edu."

Not all the records you requested are located within the OSVA FOIA office. The VA OIT FOIA office is processing your FOIA request (**18-12957-F**) for records located within its office, as are the OGC FOIA office (**18-12958-F**), OPIA FOIA office (**18-12959-F**), and OCLA FOIA office (**18-12961-F**).

12/19/18 Beginning of Reasonable Searches

On December 19, 2018, the OSVA FOIA Officer requested that the VA OIT office provide all responsive emails in its possession. Records that OSVA created after our search cut-off date, December 19, 2018, are not considered within the scope of your FOIA request. FOIA does not obligate agencies to create records, but only to process records that already exist as of the cut-off date. LaRoche v. SEC, 289 F. App'x 231, 231 (9th Cir. 2008) (explaining that agency was not required to create new documents to satisfy FOIA request); Poll v. U.S. Office of Special Counsel, No. 99-4021, 2000 WL 14422, at *5 n.2 (10th Cir. Jan. 10, 2000) (recognizing that FOIA does not require agency "to create documents or opinions in response to an individual's request for information" (quoting Hudgins v. IRS, 620 F. Supp. 19, 21 (D.D.C. 1985))); Sorrells v. United States, No. 97-5586, 1998 WL 58080, at *1 (6th Cir. Feb. 6, 1998) (advising that agency is not required to compile document that "contain[s] a full, legible signature"); Krohn v. DOJ, 628 F.2d 195, 197-98 (D.C. Cir. 1980) (finding that agency "cannot be compelled to create the [intermediary records] necessary to produce" information sought); *Citizen's Guide on Using FOIA*, U.S. House Oversight & Gov't Reform Comm. §V.B, pp. 6 (Sept. 2012), <https://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf> ("Please be advised an agency is not obligated to create a new record to comply with a request").

IAD & Reasonable Searches Dated 7/18/19, 1/10/19, and 12/19/18

On January 10, 2019, the VA OIT office provided all responsive emails within its possession, with the OSVA FOIA Officer to conduct follow up searches. On July 18, 2019, the OSVA FOIA Officer searched through the below emailboxes with the date timeframe of April 1, 2018, to December 19, 2018:

- 1) Casin Spero,
- 2) Darin Selnick,
- 3) David Shulkin,
- 4) Peter O'Rourke,
- 5) Robert Wilkie, and,
- 6) Thomas Bowman.

The OSVA FOIA Officer searched for all emails to, from, or copying email addresses with domain @phoenix.edu. This search yielded two (2) pages. After reviewing the two (2) pages, OSVA releases them information redacted per FOIA Exemption 6.

5 U.S.C. § 552(b)(6) exempts from required disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 6 permits VA to withhold a document or information within a document if disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government. Specifically, the information being withheld, as indicated on the enclosed documents, under FOIA Exemption 6, consists of names, identities, job titles revealing identities, and phone numbers of veterans or private school employees. However, we release the names and official contact information of VA Senior Executives. Veterans or school employees retain a significant privacy interest under certain circumstances, such as in instances where the release of their information could represent a threat to their well-being, harassment, or their ability to function within their sphere of employment. The veterans or school employees have a substantial privacy interest in their personal information. In weighing the private versus the public interest, we find that there is no public interest in knowing names, identities, job titles revealing identities, and phone numbers of veterans or school employees. The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the FOIA requester is in a position to provide the requested information to members of the general public, and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the records, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest of the individuals whose names are redacted. The protected information has been redacted and (b)(6) inserted. "Withholding a telephone number or e-mail address, alone, is not sufficient to protect that [privacy] interest; alternate means of contacting and harassing these employees would be readily discoverable on the Internet if this court ordered their names disclosed." Long v. Immigration & Customs Enf't, 2017 U.S. Dist. LEXIS 160719 (D.C. Cir. 2017).

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not

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affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: John Buck

Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration

8601 Adelphi Road

College Park, MD 20740-6001

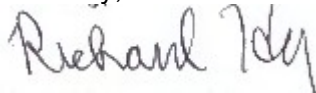
FOIA Appeal

This concludes OSVA's Initial Agency Decision to request **18-12960-F**. Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,



Richard Ha, JD, CIPP/G
OSVA FOIA Officer

Attachment – redacted two (2) pages of emails